



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/595,357

04/12/2006

Todd R. McNutt

PHUS030413US

7801

38107

7590

02/22/2010

PHILIPS INTELLECTUAL PROPERTY & STANDARDS

P. O. Box 3001

BRIARCLIFF MANOR, NY 10510

EXAMINER

NEWMAN, MICHAEL A

ART UNIT

PAPER NUMBER

2624

MAIL DATE

DELIVERY MODE

02/22/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/595,357</p>	<p>Applicant(s) MCNUTT ET AL.</p>	
	<p>Examiner MICHAEL A. NEWMAN</p>	<p>Art Unit 2624</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 February 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-4,6,7,9,10,12,14,15 and 17-23.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Matthew C Bella/
Supervisory Patent Examiner, Art Unit 2624

Continuation of 11. does NOT place the application in condition for allowance because:

a. In pages 9 and 13 of the Remarks, regarding the 35 U.S.C. 103 rejection of claim 20, over Krause et al. (U.S. Patent No. 6,701,174), "Krause" and Chaney et al. (U.S. Patent No. 5,926,568), "Chaney"; Applicant's Representative submits that the combination fails to teach allowing a user to manually shape the shaped model to conform image data. Applicant's Representative points, as support, to the rejection of claims 1, 2, 3, 14, 15 and 17 in which it is admitted that Krause does not teach a user interface allowing a user to select a 3D shape model of the organ, manipulate a set of global tools to fit the 3D shape model to the 3D image of the organ, and manipulate a set of manual tools to modify regions of the 3D shape model. Initially, the Examiner submits that the limitations in claim 1, for example, explicitly require a user interface by which a user manipulates manual tools. It is this specific recitation of such a user interface that Krause does not teach. The language in claim 20, on the other hand, simply requires "applying manual shape-altering tools". As stated in the previous Office Action, Krause incorporates by reference the teachings of Barr and Coquillart in connection with the teachings of Perry. As pointed out by Applicant's Representative, it is Perry's technique that Krause ultimately uses in that embodiment. Perry, not unlike Barr and Coquillart, teaches performing volume deformations that simulate those that would be manually made on an actual object. In other words, 'bending', 'stretching', 'twisting', all are manual deformation tools, although they are actually automatically applied by the computer systems. Since the claim does not specifically require that a user interface be provided by which a user can apply shape-altering tools, a system that automatically applies such manual shape-altering tools (bending, twisting, stretching, pushing, etc.) can be reasonably interpreted as performing the claimed step. Therefore, the Examiner respectfully submits that Krause in view of Chaney does teach the limitations of claim 20.

b. In pages 10 - 13 of the Remarks, regarding the 35 U.S.C. 103 rejection of claims 1 - 3, 12, 14, 15 and 17, over Krause, Schweikard et al. (PCT Pub No. WO02/09611) [with references to its corresponding U.S. Patent No. 7,167,738 as an English translation], "Schweikard", McInerney et al. "Deformable Models in Medical Image Analysis." Medical Image Analysis. 1.2 (1996) 91-108. Print, "McInerney", Newell et al. (U.S. Patent No. 6,911,980), "Newell", and Gauthier (U.S. Pg Pub No. 2004/0012641), "Gauthier"; Applicant's Representative submits that the combination fails to teach fitting a 3D model to a 3D image. More specifically, that both Krause and Schweikard only fit a 3D model to 2D shadowgrams. The Examiner respectfully disagrees. In the previous Office Action, it was noted that Krause does not teach reconstructing image data into a three dimensional image representation of the organ. Schweikard was therefore introduced to teach that it was well known to generate a 3D representation of bones using two or more X-ray images. Furthermore, McInerney was introduced to teach that it is advantageous to try to fit 3D deformable models (such as Kraus') of organs directly onto 3D image volumes instead of slice by slice using 2D contour models. Clearly then, one of ordinary skill in the art would have been motivated to obtain 3D representation images of organs, reconstructed from image data, as taught by Schweikard, in order to more accurately fit Kraus' 3D shape model directly onto it using the manual tools taught by McInerney. Therefore, the Examiner respectfully submits that the combination does teach the limitations of the claims.